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S.B. CIVIL WRIT PETITION NO.7366/2006.
M/s. Kishan Engineering Works & Ors.
Vs.
The Rent Tribunal, Jodhpur & Anr.

Date of Order :: 26th July 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. C.S. Kotwani, for the petitioners.
Mr. M.R. Singhvi and
Mr. S.R. Sharma, for the respondent No.2.

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BY THE COURT:

Heard learned counsel for the petitioners and perused the material placed on record.

The petitioners-tenants are facing a petition for eviction filed by their landlady-respondent No.2. The landlady has sought eviction, inter alia, on the ground of her requirement of the suit premises for being situated on the ground floor and her being suffering from cardiac problems and having been advised to continue with medical treatment and to avoid physical exertion.

By an order dated 06.07.2006 (Annex.2), the Rent Tribunal considered an application moved by the landlady under Section 21(3) of the Rajasthan Rent Control Act, 2001 ('the Act') alleging that she was under treatment of the cardiologist Dr. Sanjeev and Dr. O.P. Soni and wanted to produce them to prove her ailment certificate but the said

doctors were not ready to file any affidavit in the court and, therefore, they may be summoned. The learned Tribunal proceeded to reject the application so filed by the landlady after noticing the fact that the petition for eviction was pending since the year 2004 and that the landlady has not got herself examined on Commission though permitted to do so; that no affidavit of the medical officers was produced nor was it stated in the eviction petition that the doctors were not willing to extend their affidavits. The Tribunal also observed that the landlady could have proved her ailment by production of relevant certificates but has failed to do so and the application was of the nature of causing delay in the matter. The landlady sought a review of the said order dated 06.07.2006 but the review application was also rejected by the order dated 24.08.2006 (Annex.3).

Thereafter, on 06.09.2006, the landlady filed an application (Annex.4) under Section 15(6) and 21(3) of the Act with the submissions that her son contacted the aforesaid doctors and at his request, they have signed the affidavits that were being filed with the application. It was submitted that the evidence of non-applicant is yet to commence and even otherwise under Section 21(3) of the Act, the principles of natural justice are to be applied by the Tribunal and it would be in the interest of justice to permit production of such

affidavits. The application so filed by the landlady was opposed by the petitioners by filing their reply (Annex.5). The petitioners contended that in view of the requirements of Section 15(1) of the Act such affidavits were required to be filed by the applicant at the time of and along with filing of the petition for eviction; that the evidence of the applicant has been concluded on 08.05.2006 and the matter is pending for non-applicants' evidence but the applicant is somehow delaying the matter by filing different applications. The petitioners also questioned that if the doctors were not ready to file their affidavits then what was the necessity of filing the affidavits now ? The petitioners-tenants further contended that the applicant had already been granted enough opportunities to file the affidavits and to examine herself in relation to the ailment but neither she appeared for examination before the Tribunal nor got herself examined on commission and now she was only trying to fill-up the lacunae and the submission of affidavits at this stage was nothing but abuse of the procedure.

The application so filed by the landlady has been considered and decided by the learned Tribunal by its impugned order dated 20.11.2006 (Annex.6). After reproducing the averments as taken in the application and its reply, the Tribunal has noticed the contention raised on behalf

of the present petitioners and found that though the evidence of the applicant had been concluded but the two affidavits could be necessary for just decision of the petition and, therefore, permitted production of such affidavits and extended a liberty to the petitioners to cross-examine the said witnesses. The substantive and concluding part of the order dated 20.11.2006 reads thus:

> "दोनों पक्षों की बहस सुनी गई । अप्रार्थी के अधिवक्ता का कथन है कि प्रार्थना पत्र स्वीकार करने में मुख्य आक्षेप यह हैं कि अर्जीदार की साक्ष्य दिनांक 08/06/2006 को बन्द हो चुकी हैं वो प्रकरण को लम्बा करने की गरज से प्रार्थना पत्र प्रस्तुत कर रहा हैं । ओर यह भी कहा हैं कि प्रार्थीया ने डा. के शपथ पत्र पेश करने हेतु कई अवसर दिये जा चुके हैं प्रार्थीया ने कमिश्नर पर भी बयान नहीं करवाये हैं हांलांकि इस प्रकरण में प्रार्थीया की साक्ष्य समाप्त हो चुकी है याचिका के न्यायोचित निस्तारण के लिये आवश्यक हो सकते हैं इसलिये इन दोनों शपथ-पत्रों को अभिलेख पर लिये जाने की अनुमति प्रदान की जाती है अप्रार्थी चाहे तो वो इन गवाहान से प्रतिपरीक्षण कर सकता हैं । प्रार्थीनी ने डा साघवी व डा0 सोनी के शपथ-पत्र पेश किये है, प्रार्थना पत्र स्वीकार किया जाता हैं ।"

Aggrieved, the petitioners have preferred this writ petition. Learned counsel Mr. C.S. Kotwani appearing for the petitioners has vehemently contended that the order passed by the learned Tribunal remains squarely contrary to the requirements of the principles of natural justice and even

contrary to the earlier orders made in this case by the Tribunal. Learned counsel contended that the evidence of the applicant had already been concluded on 08.05.2006 when the applicant herself specifically stated being not interested in adducing other evidence; and thereafter the attempt to get the doctors summoned failed with rejection of such prayer by the order dated 06.07.2006 and with rejection of the review application on 24.08.2006; and thus, according to the learned counsel, there was no occasion for the Tribunal to have permitted production of the affidavits in relation to the same doctors. Learned counsel strenuously contended that the procedure adopted by the Tribunal is nothing but permitting the applicant to fill-up lacunae in her case and does not subserve the cause of justice. Learned counsel further submitted that in view of Section 15(1) of the Act, the affidavits and the documents upon which the person claiming possession wants to rely upon, ought to accompany the petition for eviction and the record cannot be permitted to be supplemented at the later stage.

Learned counsel further pointed out the fact that though on the earlier occasion summoning of the doctors had already been refused but after passing of the impugned order, now the applicant landlady has moved an application on 08.01.2007 seeking summoning of the said doctors; and

contended that the applicant is only aiming at abuse of the process of the court.

Having given a thoughtful consideration to the submissions made on behalf of the petitioners and having perused the material placed on record and the law applicable to the case, this Court is clearly of opinion that this writ petition remains bereft of substance and deserves to be dismissed.

So far the proceedings in progress of the petition for eviction are concerned, the orders passed by the Tribunal including the order dated 08.05.2006, of closure of evidence of the applicant; the order dated 06.07.2006, of refusing her application for summoning the said doctors; and the order dated 24.08.2006, of rejecting her review application admit of no doubt or dispute. Even after noticing all these facts and circumstances and even after noticing the objection of the petitioners that the applicant was merely intending to prolong the proceedings, that her evidence had already been closed, and that she had already been granted enough opportunities to produce such affidavits, yet the Tribunal has found that the said affidavits could be necessary for just disposal of the petition for eviction and has, therefore, permitted the affidavits to be placed on record and at the same time has given liberty to the non-applicants to cross-examine the said witnesses.

This Court is clearly of opinion that rules of procedure are intended to subserve the cause of justice and, ordinarily, a matter is required to be decided on merits extending opportunity to the parties to make their submissions and to produce relevant evidence on record; and it is not preferred to dispose of the matters on mere technicalities. Section 21 of the Act embodies such fundamental rules of interest of justice in substantially broad and wide terms. Sub-section (1) and relevant part of sub-section(3) of Section 21 read thus :

> **"Section 21. Procedure and powers of the Rent Tribunal and the Appellate Rent Tribunal** – (1) In every case before the Rent Tribunal and the Appellate Rent Tribunal the evidence of a witness shall be given by affidavit. However, the Rent Tribunal or the Appellate Rent Tribunal, where it appears to it that it is necessary in the interest of justice to call a witness for examination or cross-examination and such witness can be produced, may order attendance for examination or cross-examination of such a witness.
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> (2) - - - - - - - - -
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> (3) the Rent Tribunal and the Appellate Rent Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (Central Act No.5 of 1908), but shall be guided by the principle of natural justice and subject to other provisions of this Act or the Rules made thereunder and shall have powers to regulate their own procedure, and for the purpose of discharging their functions

> under this Act they shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Central Act No.5 of 1908) while trying a suit or an appeal. - - - - - - - - -"

It is apparent that the evidence may be permitted to be adduced by the Rent Tribunal or even by the Appellate Rent Tribunal whenever it appears necessary to do so in the interest of justice; and the Rent Tribunal, or the Appellate Rent Tribunal, could order attendance of the witness or witnesses for examination or cross-examination. The Rent Tribunal and the Appellate Rent Tribunal are not bound by the procedure of the Code of Civil Procedure but are guided by the principles of natural justice. The requirements of filing of the affidavits and documents along with the application and reply as contained in Sub-sections (1) and (3) of Section 15 of the Act are required to be read in conformity and conjunction with other provisions of the Act including Section 21; and it cannot be laid down as a blanket proposition that if a party has failed to produce any particular affidavit or document along with the petition or reply, as the case may be, it shall stand precluded from producing any material relevant for consideration of the issues involved in the matter at any stage later. It is ultimately for the Tribunal concerned to consider, in the given set of facts of each particular case, as to whether any particular affidavit or

document is required to be permitted or not. No strait jacket formula could be provided nor appears necessary to be so provided.

It is not that the Tribunal has passed the impugned order dated 20.11.2006 oblivious of the previous proceedings or in ignorance of the state on record. Despite noticing the fact that the applicant was provided several opportunities to produce such affidavits and that the applicant's evidence had already been concluded, yet the Tribunal has found it expedient in the interest of just disposal of the case that the affidavits of the said doctors be taken on record. This Court is clearly of opinion that, at the most, such order results in permitting the party to produce additional evidence before the matter had been concluded. The Tribunal has the jurisdiction to permit a party to do so and there appears no such jurisdictional error in the matter so as to warrant interference in the writ jurisdiction of this court. It is noteworthy that the Tribunal has safeguarded the interest of the petitioners with specific liberty to them to cross-examine the said witnesses.

So far the application later on moved by the applicant landlady for summoning of the said doctors is concerned, it has been pointed out during the course of submissions that the same is still pending consideration before the Tribunal. This Court would not like to make any comment or observation

in relation to the said application filed by the respondent-landlady that is required to be considered by the Tribunal on its own merits.

The writ petition fails and is, therefore, dismissed.

(DINESH MAHESHWARI), J.

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